

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

WEDNESDAY
MONDAY, THE 9TH DAY
MILLER
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OF MARCH, 2015

THE HONOURABLE

JUSTICE McEWEN

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BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

OAK BAY GOLF CLUB INC.

Respondent

SUBSTITUTION ORDER

THIS MOTION, made by Ernst & Young Inc. (“**E&Y**”), in its capacity as receiver (the “**Receiver**”), without security, of the real property owned by Oak Bay Golf Club Inc. (“**Oak Bay Golf**”) and all of the personal property, assets and undertakings of Oak Bay Golf acquired for, or used in relation to business carried on by Oak Bay Golf, including all proceeds thereof (collectively, the “**Property**”), for an Order (i) approving the fees and disbursements of the Receiver and Goodmans LLP, as detailed in the Receiver’s First Report; (ii) approving the Receiver’s First Report and the activities of the Receiver described therein; and (iii) authorizing the Receiver to commence a process to market and sell the Property; and **THIS MOTION** made by 2453340 Ontario Inc. and Eden Oak (Port Severn) Inc. to substitute Pollard & Associates Inc. (“**Pollard**”) for E&Y as the receiver, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, filed, the First Report of the Receiver dated February 26, 2015 (the “**First Report**”), the Affidavit of Stuart Clinton sworn February 26, 2015, the Affidavit of L. Joseph Latham sworn February 26, 2015, all filed, and the Notice of Motion of 2453340 Ontario Inc. and Eden Oak (Port Severn) Inc. dated March 3, 2015, to substitute Pollard for E&Y as the receiver, and on hearing the submissions of counsel for the Receiver, no one else appearing though served as appears from the Affidavit of Service of Ryan Baulke, sworn March 2, 2015, and the emails of Charles Chang, counsel for 2453340 Ontario Inc. and Eden Oak (Port Severn) Inc., dated March 3, 2015,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion, Motion Record, the First Report in respect hereof and the Notice of Motion of 2453340 Ontario Inc. and Eden Oak (Port Severn) Inc., be and is hereby abridged so that the motions may be heard today and that further service on any interested party is hereby dispensed with.

FIRST REPORT

2. **THIS COURT ORDERS** that the First Report and all of the actions and activities of the Receiver described therein be and are hereby approved.

FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that, further to the direction of the Court on March 3, 2015, E&Y’s motion for the approval of its fees and disbursements, and those of its counsel, which are detailed in the First Report, as well as any and all fees and disbursements that E&Y (including as Receiver) or its counsel may have incurred to date and may incur hereafter in connection with this proceeding, is adjourned until March 31, 2015.

4. **THIS COURT ORDERS** that all fees and disbursements of E&Y and its counsel incurred prior to and after this Order, as may be approved by the Court, shall continue to be secured by the Receiver’s Charge contemplated by paragraph 17 of the Receivership Order. For greater certainty and without limiting the generality of the foregoing, the Receiver’s Charge shall apply to all fees and disbursements incurred by E&Y and its counsel with respect to any and all

matters related to Oak Bay Golf from this date forward and shall remain in force until payment in full of all such fees and disbursements of E&Y and its counsel that may be approved by this Court is completed.

SALE PROCESS

5. **THIS COURT ORDERS** that the consideration of the sale process as detailed in the First Report shall be adjourned *sine die* to be addressed by the Substitute Receiver (defined below) at a future date.

SUBSTITUTION OF RECEIVER

6. **THIS COURT ORDERS** that, subject to paragraphs 4 and 9 to 16 herein, E&Y is hereby discharged and relieved from any further rights, powers, obligations, liabilities, responsibilities or duties in its capacity as Receiver pursuant to the Order (appointing Receiver) dated November 12, 2014 (the "**Receivership Order**").

7. **THIS COURT ORDERS** that all protections afforded to E&Y under the Receivership Order shall remain unaffected.

8. **THIS COURT ORDERS** that E&Y shall be and is hereby released from any and all claims, suits, actions, complaints, liability and proceedings of any kind relating to its activities as the Receiver arising from its actions and conduct as Receiver (including, but not limited to, the transition of the receivership proceedings), and with respect to the transition to the Substitute Receiver, whether known or not, save and except for (i) any claims based on fraud or intentional misconduct; and (ii) any order/direction that this Court might make with respect to the approval of the fees and disbursements of the Receiver and its counsel as contemplated by paragraphs 4 and 5 above.

9. **THIS COURT ORDERS** that, notwithstanding paragraph 6 above, E&Y continues to be authorized to do all such things as it considers necessary or advisable to facilitate the transfer of the receivership proceedings to Pollard or to complete its mandate under the Receivership Order (as modified by this Order).

10. **THIS COURT ORDERS** that E&Y shall prepare and file a final report reporting on its activities, including the transfer of responsibilities to the Substitute Receiver.

11. **THIS COURT ORDERS** that notwithstanding its discharge as contemplated by paragraph 6 above, E&Y shall continue to have the right to engage counsel to assist with the exercise of its powers and duties, including without limitation those conferred by this Order.

12. **THIS COURT ORDERS** that E&Y and its counsel shall be paid their reasonable fees and disbursements (which fees and disbursements shall be subject to this Court's approval on E&Y's motion referenced in paragraph 3 above) until E&Y and its counsel are fully paid for their Court-approved fees and disbursements, in each case at their standard rates and charges.

13. **THIS COURT ORDERS** that pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, Pollard is hereby appointed as receiver (the "**Substitute Receiver**") in place of E&Y under the Receivership Order, and all references to the "Receiver" in the Receivership Order shall be a reference to Pollard from and after the date hereof.

14. **THIS COURT ORDERS** that:

- a) the Substitute Receiver is hereby responsible and liable for the repayment of the amounts owing under each of: (i) Receiver's Certificate No. 1 dated November 17, 2014 (in the amount of \$50,000 plus any applicable interest); (ii) Receiver's Certificate No. 2 dated January 7, 2015 (in the amount of \$150,000 plus any applicable interest); (iii) Receiver's Certificate No. 3 dated March 3, 2015 (in the amount of \$20,000 plus any applicable interest); and (iv) Receiver's Certificate No. 4 dated March 3, 2015 (in the amount of \$215,000 plus any applicable interest) (together, the "**Receiver Certificates**");
- b) the Substitute Receiver is hereby responsible and liable for all trade obligations (excluding the fees and disbursements of the Receiver and its counsel) incurred by E&Y to the date hereof;

- c) subject to paragraphs 14(e) and 15, E&Y is hereby authorized and directed to transfer any funds remaining in its possession from the proceeds of Receiver's Certificates Nos. 1, 2 and 3 to the Substitute Receiver;
- d) For greater certainty and without limiting the generality of paragraph 6, 7 and 8 above, but subject to paragraph 14(e) and 15 below, E&Y shall be and is hereby released from all claims, suits, actions, complaints, liability and proceedings of any kind relating to the Receiver Certificates; and
- e) Goodmans LLP, which holds in trust the amounts advanced on account of Receiver's Certificate No. 4, shall transfer such amounts to E&Y, to be held as cash collateral for its and its counsel's entitlements under the Receiver's Charge, and E&Y shall: (i) not distribute any amount of such funds without further order of the Court; and (ii) within 15 days of distributing all of such funds as may be ordered/directed by this Court, provide the Substitute Receiver with an accounting of the distribution of such funds.

15. **THIS COURT ORDERS** that the funds currently held by E&Y in trust with respect to deposits it has received on account of annual memberships and pre-paid green fees and which it is holding in trust ("**Advance Green Fees Trust**") shall be transferred to the Substitute Receiver and the Substitute Receiver shall: (i) by March 31, 2015, contact each of the individuals and entities that have made such deposits to advise them of the appointment of the Substitute Receiver; (ii) use its best efforts to maintain the course in good condition; and (iii) shall be fully, solely and severally responsible and liable for such funds.

16. **THIS COURT ORDERS** that, without limiting the generality of paragraphs 6, 7 and 8 above, E&Y shall be and is hereby released from any and all liability with respect to the Advance Green Fees Trust upon transferring the funds to the Substitute Receiver.

GENERAL

17. **THIS COURT ORDERS** that E&Y may from time to time apply to this Court for advice and directions with respect to this Order and the transition of the receivership proceedings from it to the Substitute Receiver.

A handwritten signature in black ink, appearing to be 'M. East', written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 11 2015

Handwritten initials 'MJ' in black ink.

BUSINESS DEVELOPMENT BANK OF CANADA
APPLICANT

- and -

OAK BAY GOLF CLUB INC.
RESPONDENT

Court File No.: CV-14-10738-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SUBSTITUTION ORDER
(March 9, 2015)

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